

Union Pacific Railroad Co

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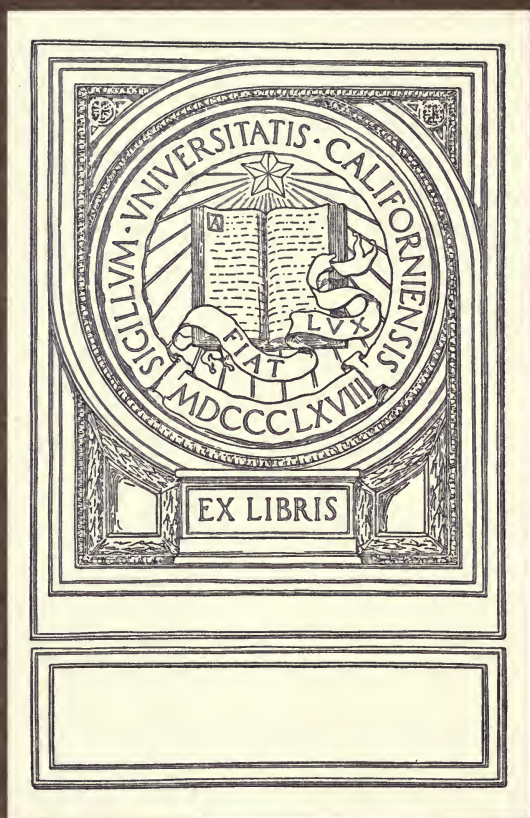
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AGREEMENT
OF HOLDERS OF
COLLATERAL NOTES
OF

Union Pacific Railway Company.

UNION OF
CALIFORNIA

DATED FEBRUARY 15, 1897.

J. P. MORGAN & CO.,
DEPOSITARIES.

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Agreement

OF HOLDERS OF

Collateral Notes

OF

UNION PACIFIC RAILWAY COMPANY.

Agreement, made this fifteenth day of February, 1897, between such holders of hereinafter described COLLATERAL TRUST NOTES of the Union Pacific Railway Company as shall deposit their Collateral Notes under this Agreement in the manner hereinafter provided, parties of the first part; the firm of J. P. MORGAN & Co., of the City and State of New York (hereinafter called the "Depositaries"), parties of the second part; and LOUIS FITZGERALD, JACOB H. SCHIFF, T. JEFFERSON COOLIDGE, JR., CHAUNCEY M. DEPEW, MARVIN HUGHITT and OLIVER AMES, as a Committee under the Plan and Agreement, hereinafter mentioned, for the reorganization of the Union Pacific Railway Company (hereinafter called the "Reorganization Committee"), party of the third part.

WHEREAS, the Union Pacific Railway Company issued its Six Per Cent. Collateral Trust Notes (hereinafter called "Collateral Notes"), under and pursuant to a certain Indenture of Trust, dated September 4, 1891, (hereinafter called

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" Collateral Trust Indenture "), executed by said Union Pacific Railway Company to the firm of Drexel, Morgan & Co. (now J. P. Morgan & Co.), of the City and State of New York, as Trustees, and there are now outstanding and unpaid \$8,488,000 of such Collateral Notes, the remainder of the Collateral Notes issued under said Collateral Trust Indenture having been purchased pursuant to such Indenture and canceled ; and,

WHEREAS, the said Collateral Notes matured on the first day of August, 1894, but said Union Pacific Railway Company made default in the payment thereof, and is wholly insolvent, and receivers of its property have been appointed ; and

WHEREAS, holders of said Collateral Notes have called upon the Trustees under said Collateral Trust Indenture to enforce the security thereof for the benefit of the holders of the Collateral Notes thereby secured, on account of such default in the payment of such Collateral Notes at maturity ; and

WHEREAS, it is in the interest of the trust estate under said Collateral Trust Indenture, and also of the holders of all such Collateral Notes, that the holders of such notes should unite for the purpose of bidding at any public sale of such collaterals in order to prevent the sacrifice of such collaterals by a sale thereof without a prior arrangement necessary and sufficient to procure an adequate price therefor ; and

WHEREAS, the parties of the second part are a Committee under a certain plan and agreement dated October 15, 1895, made and accepted by the Committee and by creditors and stockholders of the Union Pacific Railway Company, for the reorganization of the Union Pacific Railway Company, and such Committee desires to prevent the collaterals under said Collateral Trust Indenture from being sold at a sacrifice and without adequate reduction of the debts of the Union Pacific

Railway Company, and, so far as practicable and consistent with the duty and the powers of the Trustees, to secure, for the benefit of the Company to be organized under such plan, the privilege of acquiring on the terms herein set forth, at any time prior to February 1st, 1902, such of said collaterals as shall be purchased under this Agreement by use of the deposited Collateral Notes and as shall not have been sold by the Depositaries hereunder; and

WHEREAS, the parties hereto anticipate that, if sold at public auction as provided in said Collateral Trust Indenture, such collaterals may not realize a sum sufficient to pay off the whole amount of said Collateral Notes now outstanding; and it is intended by this Agreement to authorize the Depositaries, at any auction sale of such collaterals, to bid such sums as will prevent a sacrifice thereof, and in case of the purchase by them of such collaterals, in their discretion to consent to the entire satisfaction of all such deposited Collateral Notes; and

WHEREAS, it is also the purpose of this Agreement to authorize the Depositaries to administer during the period of five years any collaterals purchased by them hereunder with the view of realizing sums in cash sufficient to pay, as hereinafter more particularly set forth, to the holders of Certificates of Interest and warrants issued hereunder the equivalent of interest at the rate of six per cent. per annum from February 1, 1897, and also the principal sums of such Certificates; and it is intended that in case the collaterals purchased by the Depositaries when administered and sold hereunder, shall not realize, sums in cash sufficient to pay interest on said Certificates and the principal sums thereof as aforesaid, then and in that event such loss must be borne by the holders of such Certificates and warrants, but if after paying to the holders of the Certificates and warrants the full amount of such interest and principal a surplus shall remain,

then that such surplus shall be turned over to the Reorganization Committee or to the new company to be formed by it, in consideration of the delivery to the Certificate Holders of Preferred Stock of the new company to the amount and in the manner in this Agreement set forth :

Now, therefore, it is mutually agreed by and between the respective parties hereto as follows :

I. This Agreement shall be signed by the Depositaries and by the Chairman and Secretary of the Reorganization Committee on its behalf, and shall be lodged with the Depositaries for account of all the parties.

Holders of Collateral Notes may obtain the benefit of this Agreement only by delivering their Collateral Notes to the Depositaries on or before such date as the Depositaries shall fix, and by accepting in exchange therefor Certificates of Interest, or temporary receipts convertible into such certificates, to be issued by the Depositaries hereunder. All Collateral Notes, at the time of deposit, must be in such form as to be transferable by delivery merely ; and by such deposit each depositor sells, assigns and transfers the Collateral Notes deposited by him to the Depositaries and their successors as joint tenants, and not as tenants in common, and agrees that the Depositaries shall be vested with all the rights and powers of owners thereof.

The Depositaries shall have power, in their discretion, to fix or limit the period within which holders of Collateral Notes may deposit their notes and obtain the benefit of this Agreement.

Holders of Collateral Notes who shall fail to deposit such Collateral Notes on or before such date as the Depositaries shall fix will not be entitled to deposit the same or to become parties to this Agreement, or to share in the benefits thereof, and shall acquire no rights hereunder ; but, in their discretion, either generally or in special instances, and on such terms and

conditions as they may deem proper, the Depositaries may extend or renew the time for receiving deposits, or may receive any deposit at a later date, or waive any default.

II. The Depositaries may issue under this Agreement 8,488 Certificates of Interest (hereinafter called "Certificates") numbered from 1 to 8,488 consecutively, each in the sum of \$1,000, and to be substantially of the following tenor:

[FORM OF CERTIFICATE OF INTEREST.]

CERTIFICATE OF INTEREST

IN THE SUM OF

\$1,000.

No.-----

Under an Agreement dated February 15th, 1897, between certain depositors of Collateral Notes of the Union Pacific Railway Company of the first part; the undersigned, J. P. Morgan & Co., as Depositaries, of the second part; and Louis Fitzgerald and others, as a Committee under a certain Plan and Agreement for the Reorganization of the Union Pacific Railway Company, of the third part.

ISSUED IN RESPECT OF

UNION PACIFIC RAILWAY COMPANY

SIX PER CENT. GOLD COLLATERAL TRUST NOTE
FOR \$1,000.

This Certificate of Interest and the warrants hereto attached are issued under, and subject to, all the terms, conditions and provisions of the Agreement above mentioned in respect of a Union Pacific Railway Company Six Per Cent. Collateral Trust Note for ONE THOUSAND DOLLARS, and entitle the bearer to share in the rights and benefits specified in said Agreement. The respective warrants attached to this Certificate, represent in the order of their numbers, the corresponding semi-annual installments for interest at the rate of six per cent. per annum, which may become payable under said Agreement upon the principal sum of \$1,000, or the portion thereof then remaining unpaid in respect of this Certificate; and such

installments, if and when notice of payment shall be announced as provided in said Agreement, will be payable upon presentation and surrender of the respective warrants representing such installments and not otherwise.

This Certificate is one of a series of Certificates all of like tenor and effect numbered from 1 to 8,488, both inclusive, issued and to be issued in respect of Union Pacific Railway Company Six Per Cent. Gold Collateral Trust Notes for the aggregate principal sum of \$8,488,000 outstanding under the Indenture of Trust, dated September 4, 1891, executed by the Union Pacific Railway Company to Drexel, Morgan & Co. as Trustees, such Certificates being issued either against deposits of such Collateral Notes or against payments of cash as provided in such Agreement above mentioned, dated February 15th, 1897.

This Certificate and all interests thereby represented shall pass by delivery unless registered in the owner's name on the books of the Depositaries at their office in the City of New York, such registration being noted by them on this Certificate; after which no transfer shall be valid unless made on the books of the Depositaries by the registered owner in person or by attorney and similarly noted on this Certificate; but the same may be discharged from registry by being transferred to bearer, after which transferability by delivery shall be restored, and it may again from time to time be registered or transferred to bearer as before. Such registration shall not affect the negotiability of the warrants issued herewith by delivery merely.

To guard against any excessive issue of such Certificates of Interest no such Certificate shall be valid unless authenticated by the United States Trust Company of New York by executing the endorsement hereon.

Dated New York, February 15th, 1897.

Depositaries.

No such Certificate shall be valid until the United States Trust Company of New York shall have executed an endorsement thereon substantially of the following tenor, viz. :

[FORM OF ENDORSEMENT.]

This Certificate is one of a series of Certificates of Interest described in the within mentioned Note Holder's Agreement.

UNITED STATES TRUST COMPANY OF NEW YORK,

By

Said United States Trust Company of New York, from time to time, upon request of the Depositories, shall certify and shall re-deliver to the Depositories such Certificates to an amount in the aggregate not exceeding 8,488 of such Certificates.

To each of such Certificates there shall be attached ten warrants numbered consecutively from 1 to 10, both inclusive, representing in the order of their numbers ten consecutive semi-annual installments which may become payable, as hereinafter provided in respect of such Certificate, each of which warrants shall be substantially of the following tenor :

(FORM OF WARRANT.)

(Issued under Note Holder's Agreement dated February 15th, 1897, in respect of Union Pacific Railway Company Six Per Cent. Collateral Trust Note for \$1,000.)

Warrant No. , payable to Bearer, for the semi-annual interest on unpaid principal represented by Certificate No. .

III. In exchange for each Collateral Note in the principal sum of \$1,000 delivered and assigned to the Depositories hereunder, as provided in Article I. hereof, the Depositories will issue and deliver one of such Certificates in the sum of \$1,000.

All or any of the remainder of the authorized issue of such Certificates, being an amount thereof equal to the amount of the Collateral Notes which shall not be deposited hereunder, may be issued, sold and delivered by the Depositories, from time to time, upon receiving therefor sums in cash, or provision satisfactory to the Depositories for the payment of sums in cash, equal to the aggregate of all sums which, after the date of this Agreement, shall be payable to the holders of a like amount of undeposited Collateral Notes out of the collaterals under said Collateral Trust Indenture.

A contract bearing even date herewith has been made between the Depositaries, the Reorganization Committee and a certain Syndicate, which contract, among other things, stipulates that such Syndicate shall provide the sums in cash payable to the holders of undeposited Collateral Notes, and in consideration thereof shall receive Certificates to be issued as aforesaid in respect thereof. Such contract is hereby adopted and made a part of this Agreement.

All Certificates hereunder, whether issued in exchange for Collateral Notes or in consideration of cash payments as aforesaid, shall entitle the holders to equal and proportionate benefits and rights hereunder without preference, priority, or distinction for any cause, of any Certificate over any other Certificate, so that each and every Certificate issued and to be issued as aforesaid, shall have the same rights, benefits and advantages under this Agreement as if all had been made, executed and delivered simultaneously with the execution of this Agreement and for a common consideration. Until such Certificates shall have been engraved and shall be ready for distribution, temporary receipts may be issued in lieu of such Certificates, and such temporary receipts will be exchangeable for such engraved Certificates when ready for distribution. The holders of such Certificates and of such temporary receipts will be entitled (subject to any provisions therein contained) to the rights and benefits, and only to the rights and benefits, in this Agreement specified.

Such Certificates shall be transferable by delivery merely, unless registered in the owner's name on the books of the Depositaries at their office in the City of New York, in the manner and with the effect set forth in such Certificates ; and after such registration of any Certificate the person in whose name such Certificate shall be registered shall for all the purposes of this agreement be deemed the owner of the Certificate, and all rights in respect thereof shall accrue to such registered holder, excepting that registration shall not

restrain the negotiability of the warrants issued with such Certificate.

The Reorganization Committee and the Depositaries may treat the bearer of each Certificate which shall not at the time be registered as aforesaid, and the bearer of any warrant issued with any Certificate, whether such Certificate shall be registered or not, as the absolute owner of such Certificate or warrant, as the case may be, and shall not be affected by any notice to the contrary.

IV. The Depositaries are hereby authorized and requested as holders of such deposited Collateral Notes to receive and to collect the principal and interest of such Collateral Notes and to enforce the same and all rights under said Collateral Trust Indenture; in their discretion to apply to some court of competent jurisdiction for its aid and direction in foreclosing the equity of redemption under said Collateral Trust Indenture, and as decided and permitted by such Court, or pursuant to any other power, to cause to be sold the underlying bonds, stocks and other securities held under said Collateral Trust Indenture; and at any sale or sales to bid for, or to purchase, any of such bonds, stocks and other securities, at such prices as the Depositaries may deem reasonable. At any such sale under said Collateral Trust Indenture the Depositaries shall bid for such bonds, stocks or other securities such prices, higher than the Depositaries shall otherwise be willing to pay, as may be fixed by the Reorganization Committee, provided that it shall furnish the Depositaries with any sums required to be paid in cash (in addition to such sums as shall be provided by said Syndicate) for such bonds, stocks or other securities purchased pursuant to such action of the Reorganization Committee; and otherwise the Depositaries shall be free to refrain from bidding at any such sale if they shall so deem best. The Depositaries may cause any such purchase to be made in their own name, or by, or in the name of, others,

and they may use and apply any of the deposited Collateral Notes on account of any bid made by them, and in satisfying, so far as may be, the purchase price of any bonds, stocks or other securities purchased; and in case of purchase by them of all such bonds, stocks and other securities the Depositaries, in their discretion, may consent to the entire satisfaction of the deposited Collateral Notes.

V. All bonds, shares of stock, or other securities so purchased by the Depositaries, and all other bonds, shares of stock or other securities and all cash in any manner acquired by the Depositaries hereunder (except the preferred stock deliverable to holders of Certificates pursuant to Article VIII. of this agreement), shall be held, used and disposed of by the Depositaries as hereinafter provided, and all, taken collectively, are herein termed the "trust estate."

All or any such bonds, shares of stock, or other securities, at any time comprised in the trust estate, may be sold by the Depositaries, at any time or times, at such prices and on such terms, as the Depositaries in their discretion may deem proper, and any such sale may be made at any stock exchange, or at private or public sale, either by the Depositaries or by any agent or broker selected by them; but before making any sale of any shares of stock, prior to February 1, 1902, the Depositaries shall give to the Reorganization Committee, (or to any new company which, pursuant to Article X. hereof, may have been substituted for the Committee hereunder,) notice of the intention to make such sale, and whether it be intended to make such sale at the New York Stock Exchange, or at public auction, or at private sale, and of any offer made to the Depositaries for the purchase of such stock at private sale. In any such case of an intended sale of any such stock at private sale the Reorganization Committee shall have the preferential right to purchase such stock (all or none) on such terms as the Deposi-

taries may then be willing to accept, provided that within three days after such notice of such intention to sell at private sale shall have been given, the Reorganization Committee shall agree to purchase the same on such terms, and within five days thereafter shall pay therefor. Any such notice shall be sufficient if addressed in writing to the Reorganization Committee, or to such new company, and three days before the time of the proposed sale delivered to The Mercantile Trust Company, or to any address of such new company in the City of New York which shall have been designated by it to the Depositaries in writing. The Depositaries, however, shall not be required to give any such notice in case the Reorganization Committee shall have determined to proceed no further under such Plan and Agreement or under some modification thereof, or in case said Committee or such new company shall have made default in the performance of any of its obligations hereunder.

The Depositaries may deposit any Collateral Notes, stocks, bonds or other securities, by them held hereunder, in their own vaults or in such safe deposit vaults or such place or places of safety or with such custodian, as they may deem proper, and they shall not be responsible for the safety of any such deposit or for the acts of any such custodian.

The Depositaries shall have full power and authority to consent to any renewals or extensions of any bonds or other securities at any time held in the trust estate; to institute, or to unite in, any foreclosure or other appropriate proceedings to enforce or collect any such bonds or other securities; to transfer into their own names, or into the names of any nominees by them selected, any shares of stock at any time held in the trust estate; to join in any plan or plans of reorganization in respect of any bonds, stocks, or other securities held in the trust estate, and out of the trust estate to pay any assessment on such bonds, stocks or other securities under any reorganization plan; to buy in

for the benefit of the trust hereunder any bonds, stocks or other securities held in the trust estate sold at public sale under the provisions hereof, if, in the judgment of the Depositories, the price offered therefor by others shall not be adequate, and to resell any bonds, stocks or other securities so bought in; and generally, at the expense of the trust estate, and as the absolute owners thereof, to do any act or thing in respect of the Collateral Notes, bonds, stocks and other securities or property at any time embraced in the trust estate, which they may deem proper for the protection or benefit of the trust estate; it being hereby expressly declared that it is the intention hereof to give to the Depositories the broadest discretionary powers for the management of the trust estate and for carrying out the general purposes of this agreement, and that the Depositories shall be authorized in their discretion to reconcile any inconsistencies in this agreement and to supply any omissions, as they may deem best. The Depositories may employ, and act by, agents, trustees and attorneys, as they may deem proper and may fix their compensation. They may borrow from others, or may themselves advance, at interest, such sums of money as they may require for the purpose of paying any sums in cash needed upon the purchase of any of the bonds, stocks or other securities sold at any public sale under the said Collateral Trust Indenture, and any sums which the Depositories may deem advisable to obtain for the protection of the trust estate, or for the purpose of carrying out any plan of reorganization of any company of which bonds or stock shall be held by the Depositories, or for any other purpose of this Agreement; and they may charge or pledge the deposited Collateral Notes and any bonds, stocks or securities at any time embraced in the trust estate for the repayment of any sums borrowed and shall have a lien thereon for advances made by themselves with interest. The Depositories in their discretion may exer-

cise or may refrain from exercising any or all of the powers under this Agreement.

The Depositaries may incur any and all expenses which, in their discretion, they may deem proper for the administration and protection of the trust estate, or for carrying out or attempting to carry out, this Agreement or any of the provisions thereof, including all expenses in connection with the preparation of this Agreement and said Syndicate Agreement, the issue of Certificates, all legal expenses, all expenses for advertising, printing and for procuring the deposit of Collateral Notes hereunder, and all other expenses in any manner connected with this Agreement, or which the Depositaries, may deem expedient to incur in undertaking to promote any of the purposes thereof. The Depositaries shall be the sole judges of the propriety and the expediency of any and all such expenses, and of the amount thereof, and all such expenses shall be a first charge upon the trust estate, and shall be payable out of the proceeds thereof. Upon any sale of bonds, stocks or other securities under this Agreement, the Depositaries shall be entitled to charge and to receive to their own use, and to deduct from the proceeds of sales made by them, the usual commissions on any such sales, and such commissions together with all proper expenses incurred in making such sales shall be deemed part of the expenses of the administration of the trust estate.

It is hereby declared that no specification of particular powers shall be construed so as to limit any of the general powers by this Agreement conferred upon the Depositaries.

Unless (a) the Reorganization Committee shall have determined to proceed no further under said Plan and Agreement of Reorganization or some modification thereof, or unless (b) the Reorganization Committee shall have made default in the performance of any of its agreements herein contained, the Depositaries shall give to the Reorganization Committee, or to its nominees, or to the new company which pur-

suant to Article X. hereof may have been substituted for the Reorganization Committee hereunder, proxies to vote upon any shares of stock then held by the Depositaries hereunder for the election of any directors and for any other purpose except as such election or purpose shall be objected to by the Depositaries as prejudicial to the interests of the holders of the Certificates issued hereunder; provided, however, that the Depositaries shall not be required to give any such proxy after February 1, 1902. In any case of a disagreement the Depositaries shall be authorized to vote as they deem best, either in person or by proxy. In case the Reorganization Committee or such new company shall have determined to proceed no further under said Plan and Agreement, or in case it shall have made default as aforesaid, and in any event after February 1, 1902, the Depositaries shall be fully authorized, in their discretion, to vote upon all shares for the time being held by them hereunder and to give proxies to others to vote thereupon.

Neither the execution of this agreement nor anything herein contained shall in any manner affect, limit or impair any rights, powers or duties of said firm of J. P. Morgan & Co. as Trustees under said Collateral Trust Indenture.

VI. All sums in cash received by the Depositaries for principal or interest on the deposited Collateral Notes, or upon any bonds, stocks or other securities purchased by the Depositaries, and all sums realized by the Depositaries by the sale or other disposition of any such bonds, stocks or other securities, or in any manner resulting from the trust estate under this Agreement, shall be deposited with J. P. Morgan & Co. as bankers and may be applied by the Depositaries to the payment of any and all expenses whatsoever incurred by the Depositaries, including the repayment of any moneys advanced by the Depositaries or borrowed by them from others, and a reasonable allowance to the De-

positaries to cover expenses for clerk hire, rental of vaults, counsel fees and other incidental expenses; and after the payment, or proper provision for the payment, of all such expenses, or such part thereof as the Depositaries may think best then to pay or to provide for, any balance of such moneys remaining in the hands of the Depositaries, shall be applied by the Depositaries as follows :

FIRST. Semi-annually on the first days of February and August in each year, upon surrender and cancellation of the respective warrants therefor, such balance of moneys shall be applied to the payment to the holders of such warrants of installments equivalent to interest at the rate of six per cent. per annum from February 1st, 1897, upon the principal sum of \$1,000 in respect of each Certificate then outstanding, or the portion of such principal then remaining unpaid.

Whenever the Depositaries shall intend to pay any such installment, they shall publish notice, as hereinafter provided, of the date upon which they intend to make such payment. In case the Depositaries shall not be ready to pay any such semi-annual installment as above provided on any first day of February or August, then such installment shall thereafter be payable out of any such balance of moneys on a date to be advertised by the Depositaries as hereinafter provided, before payment of any subsequent installment, and in every such case of deferred payment, interest thereon shall be paid at the rate of six per cent. per annum from such first day of February or August, as the case may be, to the date for such payment as so advertised by the Depositaries.

The Depositaries may make part payment of any such semi-annual installment on or after the first day of February or August when payable, upon presentation

and suitable stamping or endorsement of the respective warrants therefor, which shall then be returned to the holders, and the remainder of such installment shall thereupon be payable out of any such balance of moneys, with interest at the rate of six per cent. per annum upon surrender and cancellation of such warrants before payment of any subsequent installment.

SECOND. Any surplus of such moneys remaining in the hands of the Depositaries after paying all such semi-annual installments for interest theretofore payable hereunder, or setting apart sums sufficient to pay the same, and after reserving such sums as in their discretion the Depositaries may deem advisable for future expenses and also such sum as they may deem advisable, not exceeding six per cent. on the outstanding Certificates, shall be applied by the Depositaries according to any of the following methods which, from time to time, in their discretion, they may adopt, viz. :

(a) To an amount substantially equal to, but not exceeding, such surplus, and in such manner as they shall deem best, they may by lot designate outstanding Certificates in respect of which there can be paid, from such surplus, sums which, in addition to any principal sums previously paid thereon, shall amount to the full principal sum of \$1,000 for each Certificate so designated, together with interest, as specified in Subdivision FIRST of this Article, from the date advertised for the payment of the last previous installment.

Thereupon, in the manner hereinafter provided, the Depositaries, shall advertise a notice specifying the numbers of the Certificates so designated, and stating that on a day specified in such notice, not more than six weeks after the first publication thereof, they will pay to the holders of the Certificates so designated,

severally and respectively the amounts aforesaid, and from the date of payment specified in such notice no interest shall accrue or be payable to the holders of any Certificates so designated. On or after the day specified in such notice, upon presentation of the Certificates so designated for suitable stamping or endorsement, and upon surrender and cancellation of the warrants for all interest installments thereon which shall not previously have become payable, the Depositaries shall pay the full principal sum of \$1,000, or any unpaid balance thereof, upon every such Certificate so called for payment, together with interest as provided in Subdivision FIRST of this Article from the date of the last previous installment, to the date of payment specified in such notice; and no further payments for principal or interest shall be or become due upon the Certificates so designated and all warrants issued therewith for interest installments payable after that date shall become void. But upon surrender of any such Certificate in respect of which full payment shall have been made as aforesaid, the holder thereof surrendering the same shall be entitled, as hereinafter provided, to receive \$150, in the Preferred Stock of such new company, at par when such Preferred Stock shall be received by the Depositaries for that purpose, or to share in any distribution among the Certificate Holders, pursuant to Article X. hereof, after payment in full of any unpaid balance of the principal sum of \$1,000, and of interest accrued and unpaid from February 1, 1897, in respect of each and every Certificate which shall have been issued hereunder and the warrants for interest thereon.

(b) Or, such surplus moneys in their hands, or any part thereof, may be applied by the Depositaries to the purchase of Certificates issued hereunder, either at the New York Stock Exchange or at public or private

sale. Any Certificates so purchased by the Depositaries with the warrants thereto attached shall be canceled by them, and no further rights shall accrue in respect thereof.

(c) Or, such surplus moneys in their hands, or any part thereof may be applied by the Depositaries towards the equal proportionate payment of any part of the unpaid principal of all the Certificates issued hereunder, with accrued interest at the rate of six per cent. per annum as aforesaid, until the principal sum of \$1,000 with interest shall have been paid upon each Certificate. In case of any such partial payment, notice thereof shall be advertised as hereinafter provided, and payment shall be made to the holders of the Certificates upon presentation thereof and suitable stamping or endorsement thereon; and after the date of payment so advertised semi-annual installments for interest at the rate of six per cent. per annum, as specified in subdivision FIRST of this Article, shall be payable to the holders of the respective warrants therefor, only upon the balance of principal up to \$1,000 remaining unpaid on every such Certificate, after deducting the amount of such partial payment made on account of principal.

In case on the first day of February, 1902, the full principal sum of \$1,000 with interest as above provided shall not have been paid upon all the Certificates then outstanding the Depositaries shall apply any such balance of moneys in their hands from time to time, whenever they shall deem advisable, *first*, upon presentation and surrender of the respective warrants therefor, to the payment of any unpaid installments for interest up to February 1st, 1902, with interest on deferred payments, as above provided, *secondly*, upon presentation of the respective Certificates for suitable stamping or endorsement, to the payment of accrued and unpaid interest thereon

at the rate of six per cent. per annum from February 1, 1902, and *thirdly* to the payment of any unpaid balance of the principal sum of \$1,000 upon each Certificate; such moneys, in each case, being applied to the ratable payment of the respective parties entitled thereto.

VII. In case on the first day of February, 1902, the Depositaries shall not have paid in cash, or set apart for the payment in cash, to the holders of the outstanding Certificates the full principal sum of \$1,000 upon every such Certificate and to the holders of the respective warrants therefor the respective installments for interest as above specified, and also all other sums payable hereunder out of the trust estate, then, in their discretion, the Depositaries may, and, if thereunto requested in writing by the holders of not less than one-fifth in amount of all the Certificates then outstanding, the Depositaries shall, sell at public auction all the bonds, stocks and other securities then held by the Depositaries. Such sale shall be made at such place or places in the City of New York or elsewhere and at such time or times as the Depositaries shall determine, and notice of any such sale shall be sufficiently given if a notice stating the time and place when and where the same is to be made, shall have been published not less than twice in each week for two successive weeks prior to the time of sale in two newspapers published in the City of New York; but the Depositaries may give such additional notice as they may deem reasonable. The Depositaries by announcement at the time and place appointed for such sale or for any adjourned sale or sales, may adjourn any such sale and may make any such sale at the time and place to which such sale shall be so adjourned upon giving such notice of the adjourned sale as they may deem reasonable. At any such sale the Depositaries may sell the bonds, stocks and other securities then held by them hereunder in one parcel as an entirety, or in separate

parcels, or alternately, as the Depositaries may deem best. Any sale made under or by virtue of this instrument shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Depositaries and of all parties hereto in and to the property sold, and the receipt of the Depositaries shall be a sufficient discharge to the purchaser or purchasers of the property sold, and no such purchaser or his representatives or assigns after paying the purchase money and receiving such receipt shall be bound to see to the application of the purchase money or in any manner whatsoever be answerable for any loss or misapplication thereof.

At any such sale any holder or holders of Certificates or warrants issued hereunder may bid for and purchase any of the property sold and upon compliance with the terms of sale may hold, retain and dispose of the property purchased for his or their own use.

The net proceeds of any such sale remaining after deducting and paying or providing therefrom the expenses of sale and all charges upon the trust estate and all other expenses hereunder shall be applied, *first*, upon presentation and surrender of the respective warrants therefor to the payment of any unpaid installments for interest to February 1st, 1902, with interest on deferred payments, as above provided, *secondly*, upon presentation of the respective Certificates for suitable stamping or endorsement to the ratable payment to the holders of such Certificates of accrued and unpaid interest thereon from February 1st, 1902, and, *thirdly*, to the payment of any unpaid balance of the principal sum of \$1,000 on each Certificate.

Nevertheless, notwithstanding any such request until all such stocks, bonds and other securities shall have been sold at public auction pursuant to the foregoing provisions of this Article, the Depositaries may proceed to administer the trust estate, and to make sales thereof at public or private sale as in their discretion they may deem best.

VIII. Whenever, pursuant to said Plan of Reorganization, or to some modification thereof, the Preferred Stock of the new company shall have been issued, the Reorganization Committee will deliver to the Depositories or upon their order \$1,273,200 par value of such Preferred Stock (which shall be fully paid up), being an amount equal at par to fifteen per cent. of the principal sum of the Collateral Notes now outstanding. Upon receipt of the certificates for such Preferred Stock, the Depositories shall deliver to the holders of the Certificates issued hereunder and then outstanding, severally and respectively, \$150 par value of such Preferred Stock for each Certificate (being fifteen per cent. of the principal thereof), upon surrender and cancellation (at the time of such receipt) of such Certificates, in case the principal sum of \$1,000 with interest from February 1st, 1897, to the date of such payment shall have been paid thereon in cash as hereinbefore provided, or upon presentation of such Certificates and affixing thereon an endorsement or stamp showing that such delivery has been made, in case such sums shall not have been fully paid in cash.

Any portion of such Preferred Stock which, if such Certificates had not been canceled, would have been deliverable to holders of Certificates purchased by the Depositories and canceled pursuant to clause (b) of Subdivision Second of Article VI. hereof, shall for all purposes of this Agreement be deemed to be part of the trust estate and shall be subject to the several provisions applicable to bonds, stocks and other securities held by the Depositories hereunder.

IX. At any time after delivery of such Preferred Stock as aforesaid, the Reorganization Committee shall have the option to purchase all Collateral Notes, bonds, stocks and other securities and cash at the time constituting the trust estate and then held by the Depositories under this Agreement by paying to the Depositories a sum in cash sufficient to pay all charges thereon and all expenses under this Agreement

until the same shall have been fully carried out and the Depositaries shall have been discharged from the trust, and, also, sufficient to enable the Depositaries at the expiration of six weeks after such payment to pay to the holders of the outstanding Certificates and warrants, severally and respectively, the full principal sum of \$1,000 upon each of such Certificates, together with sums equal to interest accrued and unpaid thereon to the date of payment, as specified in Article VI. hereof, or any balance of such principal and interest then remaining unpaid. Thereupon, the Depositaries shall publish, in the manner hereinafter provided, a notice that on a specified day not more than six weeks thereafter they will be ready to pay such sums and they shall make such payment upon presentation and surrender for cancellation of the respective Certificates and the warrants for interest installments not theretofore paid.

Whenever by sale or otherwise the Depositaries shall have realized from the bonds, stocks or other securities comprised in the trust estate sums in cash sufficient to pay all charges and all expenses hereunder and to pay to the holders of the outstanding Certificates and warrants, severally and respectively, any unpaid balance of the full principal sum of \$1,000 upon each of such Certificates, together with sums equal to the interest accrued and unpaid thereon as specified in Article VI. hereof, to a day which shall be fixed for such payment and advertised as in said Article provided, then in case such fifteen per cent. of Preferred Stock shall have been received by them, as above provided, the Depositaries shall deliver to the Reorganization Committee, or upon its order, any surplus of bonds, stocks, securities and cash remaining in their hands after providing in full for such payment and making suitable reservation for future expenses and contingencies, or in their discretion and if in their judgment the consummation of such plan of reorganization is reasonably assured they may make such delivery to the Reorganization Committee prior to their actual receipt of such fifteen per cent. of Preferred Stock.

The foregoing provisions of this Article are subject in all respects to the provisions of Article X. hereof.

At any time, in their discretion, on such terms as they may deem reasonable the Depositaries may sell to the Reorganization Committee any stocks, bonds or other securities, comprised in the trust estate.

Neither the Depositaries nor the Reorganization Committee assume any personal responsibility for the payment of any sum to the holders of the Certificates or warrants issued hereunder; and no sums shall be payable to the holders of such Certificates except to the extent and in the manner herein provided when and as declared by the Depositaries out of the net proceeds of the trust estate.

X. If, upon the formation of a new company pursuant to said Plan of Reorganization or any modification thereof, such new company, with the written consent of the Reorganization Committee, by a written instrument delivered to the Depositaries, shall adopt this Agreement and shall assume all the obligations of the Reorganization Committee hereunder, then the Reorganization Committee shall be fully discharged from this Agreement and such new company shall be substituted in place of the Reorganization Committee hereunder and shall become entitled to all rights of the Reorganization Committee and be bound by all the provisions of this Agreement applicable to the Reorganization Committee.

In case the Reorganization Committee shall determine to proceed no further under said Plan and Agreement of Reorganization, or any modification thereof, and shall abandon the same, then all rights and all obligations of the Reorganization Committee under this Agreement shall wholly cease and terminate.

In case the Reorganization Committee, or such new company, shall refuse to deliver the Preferred Stock of such new

company in compliance with the provisions of Article VIII. hereof, within thirty days after demand of the Depositaries, after Preferred Stock shall have been issued by such new company, the Depositaries shall have power, in their discretion, by notice in writing to the Reorganization Committee, or to such new Company (which notice may be served by delivery to The Mercantile Trust Company), to terminate this agreement as to the Reorganization Committee and such new Company, and after delivery of such notice all rights and obligations of the Reorganization Committee and of such new Company under this Agreement shall cease.

In case the Reorganization Committee shall so abandon the reorganization, or in case such Committee or such new company shall be unable or shall refuse to deliver the Preferred Stock of such new company in compliance with the provisions of Article VIII. hereof within thirty days after demand of the Depositaries after Preferred Stock shall have been issued by such new company, then the Depositaries, after paying from the proceeds of the trust estate, all charges and expenses hereunder, shall apply the cash proceeds of the trust estate in payment to the holders of the respective Certificates and warrants then outstanding, *first*, of any unpaid interest from February 1st, 1897, as aforesaid, and, *secondly*, of the principal sum of \$1,000, or any unpaid balance thereof, in respect of each Certificate; and, *thirdly*, after payment in full of such interest and such principal in respect of the warrants and Certificates as aforesaid, and after paying or reserving a sum sufficient to pay all charges and expenses hereunder or likely to accrue, they shall apply any surplus as follows, viz.: (1) Three-fifths of such surplus shall be distributed ratably among the holders of the Certificates then outstanding, and such distribution shall be made notwithstanding the fact that accrued interest, as hereinbefore specified, and the sum of \$1,000 for principal previously shall have been paid upon such Certificates; (2) one-fifth of such

surplus shall be paid to the Syndicate Subscribers as provided in such Syndicate agreement, and (3) the remaining one-fifth of such surplus shall be paid to the Depositaries as compensation for their services under this Agreement: *Provided, nevertheless,* and it is expressly agreed that, in case the Reorganization Committee shall determine to proceed no further under such Plan of Reorganization or any modification thereof, the Depositaries at any time may sell, or may enter into and carry out an agreement to sell, to any other Committee which shall undertake any reorganization of the Union Pacific Railway Company, or to any other company which shall acquire the Union Pacific Railway, or the part thereof between Omaha and Ogden, all or any of the balance of bonds, stocks and other securities remaining in the hands of the Depositaries after prior payment to the holders of the warrants and Certificates issued hereunder of sums equal to accrued and unpaid interest, and the full principal sum of \$1,000, in respect of each such certificate, as specified in Article VI. hereof; and any such sale may be made in consideration of stock, bonds or other securities of such other company, or for cash, or partly for stock, bonds or other securities, and partly for cash, upon such terms as the Depositaries in their discretion shall deem reasonable. In case of any such sale, three-fifths of the consideration received for the Collateral Notes, bonds, stocks and other securities sold (after payment of such unpaid interest and such unpaid principal in respect of the Certificates, and after paying or reserving a sum sufficient to pay or provide for all charges and expenses hereunder) shall be distributed ratably among the holders of the Certificates then outstanding; one-fifth shall be delivered and paid to the Syndicate Subscribers, as provided in said Syndicate agreement, and the remaining one-fifth shall be delivered and paid to the Depositaries as compensation for their services under this Agreement.

In every such case of payment to the holders of warrants

or Certificates, such payment shall be made upon the presentation of the respective warrants or Certificates, as the case may be, and upon suitable stamping or indorsement thereof if partly paid, or upon surrender and cancellation thereof when all sums payable in respect thereof shall be fully paid.

XI. Messrs. J. P. Morgan & Co., as Depositaries, shall act as a copartnership, and, in case of any change in said firm, the firm of J. P. Morgan & Co., as from time to time constituted, shall continue as Depositaries, with all the title, rights and powers vested in the Depositaries hereunder. Neither said firm, nor any member of said firm, assumes any personal responsibility for the performance of this Agreement, nor for the result of any steps taken or acts done for the purposes thereof, said firm, however, undertaking in good faith to endeavor to execute the same. Should the Depositaries at any time deem it advisable to proceed no further under this Agreement for any cause which in their judgment shall render it impracticable to carry out this Agreement according to its spirit, then the Depositaries may abandon further action under this Agreement and, in such manner as they may deem expedient, may distribute the trust estate ratably among the holders of the outstanding Certificates of Interest. Neither said firm, nor any member of said firm, shall be personally liable for any act or omission of any agent or trustee, custodian, depositary, or employee selected in good faith, nor for any error of judgment or mistake of law, nor in any case except for its or their own individual willful malfeasance or neglect, and neither said firm nor any member thereof shall be liable for the act or omission of the Reorganization Committee. Neither the Reorganization Committee nor any member thereof shall be liable for any act or omission of the Depositaries.

From time to time as they may see fit, at the expense of the trust estate, the Depositaries may apply to any court of competent jurisdiction for aid or instructions in any matter

connected with the interpretation of this instrument or the execution of the trusts thereunder; and, anything herein contained to the contrary notwithstanding, they shall be under no obligation to take any step or proceeding which would involve expense unless first indemnified to their satisfaction in respect thereof.

At any time hereafter said firm of J. P. Morgan & Co. may resign and may appoint the Reorganization Committee, or any other committee approved by it, or any Trust Company, to act in place and stead of said firm under this Agreement, either in respect of any or all matters provided for in this agreement or in respect of such matters as may be designated in such appointment, and any substituted Depositary, so appointed, upon accepting such appointment, shall be vested with all the rights, title, powers and duties of the Depositaries hereunder, as fully as if named herein as a party hereto, except so far as limited by such instrument of appointment.

Upon such resignation and upon the appointment of any such new Depositary or substitute and upon delivery to such new or substituted Depositary of all the Collateral Notes, bonds, stocks and other securities and cash then comprised in the trust estate hereunder, the Depositaries shall be discharged from the trusts hereunder and shall be relieved from all liability or responsibility to any of the parties hereto or to the holders of the Certificates issued hereunder.

XII. It is expressly agreed that said firm of J. P. Morgan & Co., or any member or members of said firm, and any member or members of the Reorganization Committee, may become Syndicate Subscribers under said Syndicate Agreement, and for his or their own use and benefit, and free and discharged from any trust under this agreement, may be the purchasers, or may join any Syndicate for the purchase, of any of the bonds, stocks or other securities held under this agreement at any public sale thereof; and in like manner may

become the purchaser, or be interested in the purchase, of any such securities or property at any private sale made pursuant to the provisions hereof, provided that the Reorganization Committee shall have assented to such purchase at private sale.

The Reorganization Committee agrees to deliver to the Depositaries as compensation for their services under this agreement \$424,400 par value of the Preferred Stock (which shall be fully paid up) of such new company, whenever the Preferred Stock of such new company shall be issued pursuant to said Plan of Reorganization or of some modification thereof.

XIII. The Reorganization Committee reserves the right to make any modification of said Plan of Reorganization, including any change of the capitalization of the new company, and no such modification shall affect this Agreement; and the Preferred Stock deliverable under this agreement shall be a part of the Preferred Stock which may be issued pursuant to any modification of such Plan of Reorganization, provided that if more than one class of Preferred Stock be issued then the amount or class of such stock deliverable hereunder shall be satisfactory to the Depositaries. Neither the Reorganization Committee nor any member thereof shall be personally liable under this Agreement, but this Agreement shall bind the Committee only in its representative capacity.

XIV. Unless otherwise expressly provided any and all notices under this Agreement or under any provision thereof shall be sufficiently given if advertised twice in each week for two successive weeks in at least two newspapers published in the City of New York. Any call or notice whatsoever when so advertised shall be taken and considered as personally served as of the respective dates of the insertion thereof, upon all the holders of Certificates and warrants issued hereunder, and no other notice or call shall be required.

Whenever the Depositors shall have advertised twice in each week for two successive weeks in two newspapers in the City

of New York, that on a day specified they will be prepared to make any payment under this Agreement to the holders of Certificates or warrants, then after such day so specified no interest shall accrue to the holders of Certificates or warrants in respect of the sums which the Depositaries shall have so advertised that they are prepared to pay.

In witness whereof, The Reorganization Committee has caused these presents to be signed by its Chairman and Secretary; the Depositaries have hereunto signed their firm name: and the Holders of Collateral Trust Notes have deposited such Notes hereunder.

LOUIS FITZGERALD,
T. JEFFERSON COOLIDGE, JR.,
MARVIN HUGHETT,
JACOB H. SCHIFF,
CHAUNCEY M. DEPEW,
OLIVER AMES,

} Reorganization
Committee.

By LOUIS FITZGERALD,

Chairman.

ALVIN W. KRECH,

Secretary.

J. P. MORGAN & CO.,

Depositaries.

Gaylamount
Pamphlet
Binder

Gaylord Bros., Inc.

Stockton, Calif.

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